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Federal Communications Commission
Common Carrier Bureau
Enforcement Division
Enforcement Task Force
2025 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Action Required on Payphone Competition -- Regional Bell Operating Companies

Ladies & Gentlemen:

This firm represents independent payphone service providers ("IPSP") which are confronting strong-arm tactics from the Regional Bell Operating Companies ("RBOCs") in their efforts to enter into the provisioning of payphone services to location providers ("customer(s)").

The tactics being used by RBOCs such as Ameritech and BellSouth are as follows.

BellSouth. BellSouth requires customers to use the long distance carrier (Teltrust) BellSouth selected to carry all long distance traffic from the public payphones on the customer's premises and imposing a monthly untariffed charge of $15 if the customer refuses to select Teltrust. This practice was confirmed by the BellSouth public payphones supervisor. This person confirmed that BellSouth has mailed letters to all BellSouth payphone locations in nine states announcing that Teltrust has been selected as BellSouth's PIC. This letter further advises that if end users also select Teltrust, there will no extra charge assessed; but, if a PIC other than Teltrust is chosen, a $15 monthly charge is assessed. In addition, the BellSouth payphone supervisor confirmed that BellSouth pays no commissions to payphone locations who have Teltrust as their PIC.

For semi-public phones, BellSouth follows the same policy. For example, an RV Park operator in Georgia pays a tariffed $35 per month charge to maintain a semi-public payphone for campers, visitors and business use, as necessary. When the camp operator didn't change to Teltrust, the monthly bill from BellSouth increased to $50.

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BellSouth also uses marketing materials to create the false impression that customers are required by law (the 1996 Act) to reevaluate their long distance PIC and that BellSouth controls the entities that may provide local and long distance services to the customer.

BellSouth uses prepared forms and correspondence which leverages BellSouth's status as the local exchange carrier to conceal the fact that BellSouth is actually soliciting the customer to make changes in its authorized agency for purposes of choosing a long distance carrier.

Specific instances of other BellSouth improper tactics about which empirical data has been developed include, but are not limited to, the following:

While discussing a change in the PIC for two payphones for an oil company operation in a three-way conference call among BellSouth, an IPSP and the end user, BellSouth's representative first agreed to the change to a PIC other than Teltrust, then recanted to "check with her marketing department." The end user was told to expect a call in two days from BellSouth's marketing department and the conversation ended without BellSouth implementing the end user's PIC selection.

A business in Marathon, Florida was slammed. Abruptly, payphones at this location stopped showing any traffic under the existing IPSP serving this location. This occurred after a site visit by a BellSouth representative who also informed the end user that if Teltrust was not selected as the PIC, BellSouth would remove its payphones from the premises.

Ameritech. Ameritech's marketing tactics vary from those of BellSouth, but have the same purpose, to gain unfair competitive advantage over IPSPs.

Ameritech uses a form Letter of Agency appointing Ameritech as the customer's agent to coordinate all payphone activities. In addition, the LOA contains language which directs the customer's independent PIC to turn over to Ameritech all of that PIC's contractual information with that customer. The LOA contains a clause that if the PIC fails to respond and provide the information within seven days of the LOA's execution, it is deemed that no contract exists with the PIC, the contract has expired or that the PIC has abandoned its rights. Another clause serves notice that the customer is not renewing its contract with its PIC and authorizes Ameritech to change its PIC immediately.

Customers are unaware of the legal import of signing this LOA. This is evident from the cavalier disregard for the factual reality of the status of any PIC contractual arrangements which the LOA purports to supersede. No PIC contract or tariff contains provisions permitting it to be interpreted by a non-party whose interests are adverse to the contracting parties, much less that the non-party may interpret that contract as being non-existent, expired or abandoned because of a condition (failure to respond within seven days) created by the non-party to effect its own ends.

Ameritech's LOA should be held to constitute improper interference with existing IPSP customer contracts and, hence, clearly illegal under FCC policies and requirements.

For new IPSP customers, Ameritech engages in a different tactic, one contradictory to the tactic used against an IPSP's existing customers. First, it is necessary to understand that, at present, Ameritech has contracted with LDDS WorldCom ("LDDS") to be Ameritech's chosen long distance PIC for Ameritech-provided payphone service. Customers are then subjected to a deliberate tie-in arrangement of Ameritech.

When a customer signs the contract with Ameritech to place payphones on that provider's premises, the customer is either made to select, or construed by Ameritech to have chosen, LDDS as its long distance PIC for its payphones. According to an Ameritech spokeswoman in Evansville, Indiana, Lisa [no last name provided], the customer "signs" a contract selecting LDDS as the PIC. Once "signed up" however, the customer is not permitted by Ameritech to change that PIC.

In another case, a customer in the hospitality industry was marketed by an IPSP agent. In a conference call with the agent and Ameritech, the customer told Ameritech it had selected a PIC other than LDDS. Ameritech's representative, Ruth [no last name given], advised that the customer "had already selected Ameritech." LDDS was not even mentioned. Having made such "selection," the customer was not permitted to change its PIC. Ruth then stated- - "Debbie [IPSP agent], you can't change his 0+. Ameritech is the only one who can offer this." The Ameritech representative went on to inform both the IPSP agent and the customer that Ameritech was handling the long distance service from here on out.

In still another case, LDDS faxed the IPSP requesting the existing contract between the IPSP and the customer. LDDS claimed that the customer had requested that Ameritech provide the long distance to the payphones of the customer.

LDDS knew this customer was this particular IPSP's from LDDS' own database. In effect, Ameritech started out acting as an agent and submits a request to LDDS to change the customer's long distance service over. LDDS has the customer in its database as the IPSP's customer. LDDS then sends out a fax and provides the IPSP with 5 days in which to send the IPSP's contract with the customer to LDDS, or it will switch the customer to Ameritech.

The IPSP investigated the matter. It determined that the customer had never been contacted by Ameritech or LDDS, and never signed any document or form to change his PIC. He also stated that he controlled the selection of the PIC. In short, an attempted incidence of "slamming" was involved.

The IPSP then contacted its own LDDS rep and related the foregoing events and requested to see Ameritech's contract with the customer. LDDS' IPSP rep eventually got back and reported the following. The rep requested the contact person's name for the customer and when told, admitted that was not the name of the person who allegedly authorized a switch to Ameritech. The person who alledgely was involved was not the customer representative who has authority to make such a decision.

Adding further to the concerns, Ameritech's policy, consistently applied over the past two to three years, contradicts its current tactics. Ameritech's past practice has been not to accept written contracts to change PICs; insisting instead on hearing directly from the customer by telephone.

Today when Ameritech's preferred telephonic communications procedure is followed, the results are quite different. For example, recently (July 15, 1997), the IPSP agent arranged a three-way conference call with the customer, herself and Ameritech. The Ameritech representative, Sharon [no last name given], listened politely to all the information being provided to change the customer's PIC, then informed the IPSP and customer, that the customer records would need to be checked, placed the parties on hold, but never came back on line. This was the second such episode on that same day.

In another incidence, Ameritech's "Sharon" inquired of the customer on-line if he was a new owner because the account ID number did not match with her records. At that point, Sharon abruptly stated that Ameritech would send the customer a contract for long distance and that Ameritech would be handling the long distance and hung up the phone.

Another customer's request to PIC the IPSP during a three-way conference call was denied on the basis that the Federal tax ID number was said by Ameritech's "Sharon" to be incorrect. The customer's Federal tax ID number was not incorrect.

Another agent of Ameritech, Carol [no last name given], also requested the Federal tax ID number of a customer during a three-way conference call to order service. The customer took a moment and retrieved the number, but when it was provided, Carol stated -- "I noticed that you have Ameritech on the [pay]phone, I can't make the change [the customer was requesting]." Carol then simply said "Good-Bye" and hung up the phone. Later, a test call was placed and it was determined that the payphone had been previously presubscribed to an LDDS affiliate. Hence, what Carol meant when she said that this customer was on Ameritech, is that having formerly presubscribed to LDDS, Ameritech would not accept the change in this customer's PIC.

LDDS/Worldcom's role in all this was explained in part by representatives of LDDS as follows. LDDS takes the position that Ameritech's payphones are COCOTS and that LDDS representatives hold LDDS out to the public as a "regulated COCOT vendor."

LDDS is informed that Ameritech is using three methods to sign payphone location providers to Ameritech/LDDS interLATA service -- on-site sales calls; telemarketing and bundling a service request in Ameritech's payphone installation contracts at the time of their execution. LDDS representatives claimed, however, not to have seen these contracts and also to be unaware that Ameritech tells customers that if they select LDDS through Ameritech, the customer will not be permitted to change PICs in the future.

Ameritech's payphone operations are headquartered in Evansville, Indiana, and are apparently headed up by Marcus Boyd. A telephone conversation with Mr. Boyd provided the following information.

Ameritech has approximately 230,000 payphones it owns in its five-state territory. It employs 50-60 Account Executives ("AEs") who make on-site visits to place Ameritech phones on premises and arrange for commissions on the coin traffic generated. Using a list of expired site contracts, AEs are to re-sign these location providers to new contracts with standard three to five year terms, although, a one year term may be made available.

All new payphones installed must take LDDS as the PIC, the customer is denied, indeed is given no opportunity to exercise, any discretion in the selection of the PIC. Nor at this time is the customer informed that the PIC may never be changed so long as the Ameritech payphone is installed on the premises. If the customer happens to make inquiry about the PIC, he/she may then be told that LDDS must be selected and that no change in LDDS as the PIC will be allowed as long as Ameritech's payphones are installed on the premises.

Ameritech's installation contract is one page in length, covering placement of the phone, and provisioning of intrastate and interstate traffic, with a specific reference to providing interLATA traffic originating from the payphone(s).

The contract does not name the interLATA carrier, that is, does not identify or even mention LDDS as the PIC for the phone under the contract. This omission is deliberate and explained as follows. Ameritech is "positioning themselves [sic] to be the long distance carrier" on the payphone after Ameritech gains the right to enter the interLATA market for long distance.

Although admitting that the AEs probably should disclose LDDS as the PIC, the AE s "are having a problem with this." In fact, the AEs avoid mentioning that the PIC for the payphone in question is being switched to LDDS, so customers have no idea that LDDS will be their phone's PIC.

When the contract is turned in by an AE, no verification of the customer's knowledge or selection of LDDS is made or attempted. No other checks are run to verify customer service needs or selections. No check is made whether the AE spoke with the authorized representative of the customer. No check is made whether the contract and all its terms were discussed with the customer. No mention is made that the PIC is being changed or that the customer has forfeited any rights to make a change in the future (a restriction enforced with the threat that Ameritech will remove its phones if a change is attempted). Although Ameritech receives hundreds of these contracts a day, no checks on proper signatures or knowledgeable execution are made.

Mr. Boyd admitted that an AE can get anyone to sign the contract and there is a recognized probability that the premises owner will have no knowledge of what has transpired. While there appears to be a limited recognition that these procedures, or lack thereof, are not proper, rather than institute corrective measures, the problem is passed off as being one of sloppy work on the part of the AEs -- "AEs are not the best with details or paper work."

In almost all cases, location providers will obtain a better commission rate from IPSPs than from Ameritech/LDDS. However, given Ameritech's tactics, not only is this fact unavailable to customers, but its advantage is denied by the coercive methods used requiring selection of LDDS and Ameritech.

The concern about the coercive tactics, misinformation and misrepresentation takes on added dimension for the smallest location providers. Here, Ameritech employs the United States mail to effect its scheme. For one payphone site, with low volume, Ameritech mails the contract to the customer. If the contract is not returned, no commissions at all are paid until they sign the contract. The mailing of the contract provides no information that explains the PIC change being demanded or the consequences of doing so.

Ameritech has generated its own LOA form. Ameritech claims this form provides it with the right to act as go-between for the customer by requesting a signed contract from any carrier serving the payphone at that time. Ameritech is seeking to obtain the PIC's contract with the customer in order to obtain the contract's start date, expiration date and a signature. Ameritech has been told by AT&T that its contracts with its payphone customers are none of Ameritech's business and has rejected the LOA as invalid and of no effect.

The foregoing episodes present a serious anticompetitive, consumer fraud, slamming and misuse of the mails, scenario which warrants immediate and effective regulatory intervention and cure. On a broader basis, it clearly shows that, permitted their freedom to "compete" in hitherto closed markets, the RBOCs' monopoly cultures will rule and control management decisions, resulting in abusive tactics designed to ensure continued dominance over telecommunications services in the RBOCs' operating territories.

Even more chilling to the prospects of success for the immense efforts at both the federal and state levels to replace traditional regulation with open competition, is the message being signaled here. If the RBOCs will stoop to such low tactics in connection with a small niche market of long distance services via payphones, what they will attempt in regard to the main market for general long distance services will be as bad or worse.

Supportive documentation and affidavits are available. It is requested that a meeting be arranged to discuss what action and procedures should be considered to address the concerns raised herein.

Respectfully submitted,

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Counsel for the
IPSP Ad Hoc Committee
For Consumer Choice

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